

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to geological survey, small fish animal unit, and land recycling program and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 50, “Scope of Division—Definitions—Forms—Rules of Practice,” Chapter 51, “Water Permit or Registration—When Required,” Chapter 52, “Criteria and Conditions for Authorizing Withdrawal, Diversion and Storage of Water,” Chapter 53, “Protected Water Sources—Purposes—Designation Procedures—Information in Withdrawal Applications—Limitations—List of Protected Sources,” Chapter 65, “Animal Feeding Operations,” Chapter 72, “Criteria for Approval,” Chapter 82, “Well Contractor Certification,” and Chapter 137, “Iowa Land Recycling Program and Response Action Standards,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455B.173, 455B.263, 455H.105 and 459.103.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.173, 455B.263, 455H.107 and 459.102.

Purpose and Summary

2018 Iowa Acts, House File 2303: Transfer of State Geologist and Iowa Geological Survey to the University of Iowa. The proposed amendments are being made in order to conform Chapters 50 to 53, 72, and 82 with 2018 Iowa Acts, House File 2303, signed by Governor Reynolds on March 21, 2018. House File 2303 transferred the State Geologist and the Iowa Geological Survey to the University of Iowa. Prior to the enactment of this legislation, the State Geologist was employed by, and the Iowa Geological Survey was contained within, the Department of Natural Resources (Department). There are multiple references to the Iowa Geological Survey that need to be updated to clarify that the Iowa Geological Survey is no longer part of the Department. As such, this proposed rule making amends Chapters 50 to 53, 72, and 82.

2018 Iowa Acts, House File 2281: Addition of animal unit for small fish. The proposed amendments are being made in order to conform Chapter 65 with amendments from 2018 Iowa Acts, House File 2281, signed by Governor Reynolds on April 4, 2018. House File 2281 added an animal unit capacity for fish weighing less than 25 grams to the definitions in the animal feeding operation statute, and this proposed rule making amends the definitions in Chapter 65 to make the same change.

2018 Iowa Acts, House File 2464: An increase in the reimbursement cap for the Land Recycling Program (LRP). The proposed amendments are being made in order to conform Chapter 137 with amendments from 2018 Iowa Acts, House File 2464, signed by Governor Reynolds on April 10, 2018. House File 2464 amended the Iowa Code chapter related to the LRP, Iowa Code chapter 455H. The General Assembly created the LRP in 1997 with a goal to promote the voluntary investigation and cleanup of contaminated sites under a cooperative, regulatory-friendly framework. Voluntary cleanups reduce risk to human health and the environment while working to remove the stigma attached to contaminated sites. Incentives for voluntary participation include Department verification of site assessment and cleanup plans, as well as state “sign-off” on site cleanup completion, known as a No Further Action Certificate (Certificate).

All LRP participants must enter into an agreement with the Department for reimbursement of costs incurred by the Department for oversight review associated with enrollment of the site. Prior to the enactment of House File 2464, reimbursement to the Department was capped at \$7,500 per site. For sites that have received a Certificate, participant reimbursements covered 70 percent of oversight costs and other funding sources were used to subsidize a participant's costs that exceeded \$7,500. However, those funding sources have become increasingly overburdened. To encourage continued use of the LRP, it was determined that the \$7,500 reimbursement cap needed to be increased. House File 2464 increased the cap to \$25,000 for new sites enrolled in the program on or after July 1, 2018. This proposed rule making implements this change from House File 2464.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 5, 2019. Comments should be directed to:

Kelli Book
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street, Fourth Floor
Des Moines, Iowa 50319
Email: kelli.book@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk to sign in and be directed to the appropriate hearing location.

March 5, 2019
10 a.m. to 12 noon

Conference Room 4 West
Wallace State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subparagraph **50.6(1)“a”(1)** as follows:

(1) Test drilling. In cases where test drilling is needed for geological information relevant to the application, the applicant is responsible for employing a driller who will collect, bag and properly label cutting samples at each five-foot interval and at each apparent change in geological formation from a test hole or production well hole at least the approximate depth of the proposed production well. The cutting samples must be saved for collection ~~by the department~~ in sample bags provided by the ~~department's~~ Iowa geological survey (IGS). The samples shall be submitted to IGS and be accompanied by a driller's log showing the location and total depth of the hole and a description of the materials encountered at successive intervals.

ITEM 2. Amend subrule 51.6(3) as follows:

51.6(3) Test pumping. The department may authorize by registration, as described in 51.6(5), test pumping of sources of water to determine adequacy of the source and effects of such withdrawals. The department may require the applicant to ~~conduct the test pumping under the supervision of or acquire technical assistance from the department's Iowa geological survey (IGS) or its designee~~ submit the results to the department. No such registration for test pumping shall be for a period of more than one year. A registration must be obtained from the department for any pumping test in which more than 25,000 gallons of water will be withdrawn in a period of 24 hours or less.

ITEM 3. Amend subrule 51.6(6) as follows:

51.6(6) Research contracts. The withdrawal of water for research purposes by the ~~department's IGS~~ Iowa geological survey through its agents, employees, or contractees may be authorized by registration under 51.6(5) and may be subject to conditions set by the department.

ITEM 4. Amend paragraphs **52.4(4)“b”** and **“c”** as follows:

b. Observation wells. In addition to the requirement of 52.6(3) for construction of an access port to allow measurement of water levels in each production well, an applicant or permittee may also be required to construct, maintain, and monitor observation wells as a condition of obtaining or keeping a water permit if the department, ~~after consultation with the department's IGS,~~ finds observation wells necessary to monitor the effects of the proposed or authorized withdrawals of water. Observation wells must be properly constructed and responsive to water level fluctuations in the aquifer. Plans for and monitoring of the observation wells must be approved by the department.

c. Prohibition of excessive water level declines. If the department, ~~after consultation with the department's IGS,~~ determines that withdrawals of water from the Dakota Sandstone formation of the Cretaceous system within a designated geographical area are causing water level declines which constitute a significant threat to the public interest in the availability of water for sustained beneficial use of the aquifer, renewals of permits shall be denied, and permits shall be modified or canceled in accordance with procedures in Iowa Code section 455B.271, as necessary to protect the aquifer for sustained use.

ITEM 5. Amend subrule 52.6(4) as follows:

52.6(4) Aquifer tests and observation wells. A permittee may be required to conduct a controlled aquifer test as a condition of keeping a water permit if the department, ~~after consultation with the department's IGS,~~ finds an aquifer test to be necessary to determine the effects which the authorized withdrawals have on other water uses. A controlled aquifer test, authorized by the department and supervised by a certified well contractor, licensed professional engineer or other designee of the

department, may be required for an administrative resolution of a well interference conflict pursuant to 567—Chapter 54. The permittee may be required to construct, develop, and maintain adequate observation wells for use in an aquifer test and for subsequent water level measurements or water quality monitoring.

ITEM 6. Amend rule 567—53.2(455B), introductory paragraph, as follows:

567—53.2(455B) Designation of protected sources. The department, after consultation with the department’s Iowa geological survey (IGS) and other authorities, may designate a surface water or groundwater source within a defined geographical area as a protected source.

ITEM 7. Amend subrule 53.7(1) as follows:

53.7(1) Ralston Site, Linn County. The area within a one-mile radius of a point which is 600 feet south of the midpoint of the northern edge of Section 2, Township 83 North, Range 7 West in Linn County is a protected water source. Any new application for a permit to withdraw groundwater or to increase an existing permitted withdrawal of groundwater from within the protected water source area will be restricted or denied, if necessary to preserve public health and welfare or to minimize movement of groundwater contaminants from the Ralston Site. The Ralston Site is identified in the Registry of Hazardous Waste or Hazardous Substance Disposal Sites pursuant to Iowa Code section 455B.426.

Withdrawal of groundwater from within the protected water source area may also be restricted or denied from what would otherwise be nonregulated wells, if necessary to preserve public health and welfare or to minimize movement of groundwater contaminants from the Ralston Site. The Linn County health department will refer any application for a construction permit for a private well within the protected water source area to the department’s water supply section that will, ~~after consultation with the department’s IGS,~~ determine whether the proposed well will be allowed.

ITEM 8. Amend subrule **65.1(1)**, definition of “Animal unit,” as follows:

“*Animal unit*” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

1. Slaughter and feeder cattle	1.000
2. Immature dairy cattle	1.000
3. Mature dairy cattle	1.400
4. Butcher or breeding swine weighing more than 55 pounds	0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds	0.100
6. Sheep or lambs	0.100
7. Goats	0.100
8. Horses	2.000
9. Turkeys weighing 7 pounds or more	0.018
10. Turkeys weighing less than 7 pounds	0.0085
11. Broiler or layer chickens weighing 3 pounds or more	0.010
12. Broiler or layer chickens weighing less than 3 pounds	0.0025
13. Ducks	0.040
14. Fish <u>weighing 25 grams or more</u>	0.001
15. Fish <u>weighing less than 25 grams</u>	<u>0.00006</u>

ITEM 9. Amend paragraph **72.51(4)“c”** as follows:

c. Interested agency notification. Notify regional planning commissions, county boards of supervisors, city councils, soil conservation districts through which the nominated stream runs, the fish and wildlife ~~division~~ bureaus of the department, the soil conservation division of the department

of agriculture and land stewardship, the department of agriculture and land stewardship and the Iowa geological survey bureau of the department.

ITEM 10. Amend paragraph **72.51(5)“c”** as follows:

c. Interagency coordination. Invite the fish and wildlife ~~division~~ bureaus of the department, the Iowa geological survey bureau, and any other agency or governmental subdivision expressing an interest in the proceeding to participate in the field investigation and preparation of the report, and request their assessment of whether extension of department jurisdiction over the nominated stream would have either an adverse or beneficial impact on their agency’s water resource programs.

ITEM 11. Amend subrule 82.12(1) as follows:

82.12(1) Submission of records and samples. Each certified well contractor shall submit drilling records and drill cutting samples, when required, to the Iowa Geological Survey, Department of Natural Resources, Oakdale Campus, University of Iowa, Iowa City, Iowa 52242, telephone (319)338-1575, or as otherwise directed by the department, department and to the Iowa geological survey as follows:

a. Within 30 days of completion of any water well used as part of a public water supply, a well used for withdrawal of water for which a permit is required by rule 567—50.1(455B), or wells used to monitor groundwater quantity or quality required by the department if so directed by the Iowa geological survey (IGS), department of natural resources department. The certified well contractor must submit to the department the drilling records and samples required by subrules 82.12(2) and 82.12(3) and must submit to the Iowa geological survey the samples required by subrule 82.12(4).

b. Within 30 days of the completion of any water well used as part of a nonpublic water supply or other water wells used to access groundwater. The certified well contractor must submit to the department the drilling records and samples required by subrules 82.12(2) and 82.12(3).

c. Prior to constructing a water well to be used as part of a nonpublic water supply or other water well used to access groundwater, the certified well contractor must contact the local health department in the county in which the water well is to be located to determine if submittal of drill cutting samples is required.

ITEM 12. Amend subrule 82.12(2) as follows:

82.12(2) Drilling records. Drilling records must be submitted on the Iowa water well driller’s log form provided by the Iowa geological survey, department of natural resources available on the department’s website.

ITEM 13. Amend subrule 82.12(4) as follows:

82.12(4) Cutting samples. Drill cutting samples shall be collected at intervals of 5 feet and at each pronounced change in geological formation. The Iowa geological survey, ~~department of natural resources~~, will provide drill cutting bags.

ITEM 14. Amend subrule 137.3(3), introductory paragraph, as follows:

137.3(3) Enrollment fees and oversight costs. A nonrefundable enrollment fee of \$750 must be submitted with the program application. This fee is intended to cover the department’s cost of reviewing the program application and a minimum amount of subsequent oversight costs. Subsequent fees in excess of the minimum \$750 may be assessed for actual oversight costs incurred by the department as provided in this chapter. Department oversight activities may include, but are not limited to: review of documents, meetings with the participant(s), site visits, sampling, and laboratory costs related to verification of submitted materials. The total fees for oversight costs shall not exceed \$7,500 per enrolled site enrolled prior to July 1, 2018. For sites enrolled on or after July 1, 2018, the fee shall not exceed \$25,000 per enrolled site. Fees shall be assessed and collected as follows: